



NZX Regulation Decision

Allied Farmers Limited (ALF)

Application for waiver from NZX Main Board Listing Rule
9.2.1

13 September 2013



Background

1. Allied Farmers Limited (“**ALF**”) is a Listed Issuer with ordinary shares quoted on the NZX Main Board. A wholly owned subsidiary of ALF, Allied Farmers Rural Limited (“**AFRL**”) previously operated rural merchandising, real estate and livestock businesses. The merchandising and real estate business have been sold to third parties and the livestock business sold to a subsidiary of AFRL, NZ Farmers Livestock Limited (“**NZFL**”). AFRL owns 67.73% of NZFL.
2. AFRL is negotiating a settlement with the Inland Revenue Department (“**IRD**”) due to an overdue obligation in relation to which the IRD had taken liquidation proceedings. ALF urgently requires certainty that additional funds will be available to assist it in negotiations to settle that obligation. If AFRL cannot secure funding to settle with the IRD it will enter receivership, which is likely to cause ALF to enter liquidation.
3. AFRL proposes to issue up to 1,000,000 bonds (the “**Bonds**”) to a number of persons (the “**Funders**”) which will result in AFRL being provided with up to \$1 million to enable it to partially settle the first tranche of its obligations to the IRD, once negotiated, if required. It is envisaged the Bonds will have the following principal terms:
 - (a) a \$1 issue price for each Bond;
 - (b) the Bonds will not be listed on any market;
 - (c) ALF will issue to the relevant Funders, in accordance with Rule 7.3.5, 58 options to acquire ordinary shares in ALF for every 10 Bonds held (the “**Options**”);
 - (d) an Option shall grant the holder the right, upon exercise, to purchase one fully paid ordinary share in ALF at an exercise price equal to \$0.027 (being the volume weighted average market price of ALF’s ordinary shares over the 20 Business Days prior to the announcement of the issue of the Options on 9 September 2013). The Options can be exercised at any time for up to 5 years from the date of issue. If all of the Options are exercised ALF will issue 5.8 million ordinary shares in ALF;
 - (e) the Bonds will be secured by way of a second ranking charge over the shares AFRL holds in NZFL (the “**Charge**”). Crown Asset Management Limited (“**CAML**”) has first ranking charge over the NZFL shares held by AFRL;
 - (f) a guarantee of the Bonds from ALF (the “**Guarantee**”);
 - (g) the obligations of ALF and AFRL will be secured by way of a general security over all of the assets of ALF and AFRL, fully subordinated to the rights of CAML (the “**General Security**”);
 - (h) interest of 12% per annum, payable quarterly in arrears; and
 - (i) maturity date of 31 August 2014.
4. Subject to settlement with the IRD being reached, the Funders will purchase up to \$1 million worth of the Bonds issued on the terms described in paragraph 3 thereby providing \$1 million to AFRL.
5. Garry Bluett is a director of ALF. Both Garry Bluett and an Associated Person of Garry Bluett will subscribe for the Bonds as Funders, purchasing up to \$250,000 of the Bonds. None of the other Funders are Related Parties of ALF.

6. CAML has agreed to allow ALF to draw down up to \$600,000 under an existing facility with that funding to be used, together with the funds made available under the Bonds issue, in payment of the obligation to the IRD (“**CAML Funding**”). The CAML Funding is subject to a number of conditions including completion of the NZFL Transaction (as that term is defined in the waiver decision of 6 September 2013) which has already occurred and the issuance by AFRL of the Bonds described in paragraph 3.
7. Any surplus funds available to ALF resulting from the issue of the Bonds following the settlement of the IRD obligation will be used by AFRL for working capital purposes.
8. NZX Main Board Listing Rule (“**Rule**”) 1.6.6 extends the definition of Issuer to include, as the context permits, all members of any group of companies of which the Issuer is the holding company or otherwise has a controlling interest. Accordingly, the issue of the Bonds by AFRL, being a subsidiary of ALF, will constitute entry into a transaction by ALF for the purposes of Rule 9.2.1.
9. Rule 9.2.1 restricts an Issuer entering into a Material Transaction if a Related Party is, or is likely to become, a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part.
10. Garry Bluett is a director of ALF, and is, therefore, a Related Party of ALF pursuant to Rule 9.2.3(a).
11. Rule 9.2.2(b) provides that a Material Transaction is a transaction or a related series of transactions where an Issuer issues its own Securities having a market value in excess of 10% of the Average Market Capitalisation (“**AMC**”) of the Issuer. As at 9 September 2013 (the date the issue of the Bonds was announced), ALF’s AMC was approximately \$1.79 million. As the value of the Bonds may be up to \$1 million, this would exceed 10% of ALF’s AMC. Therefore, the issuance of the Bonds is a Material Transaction for the purposes of Rule 9.2.2(b).
12. Rule 9.2.2(d) provides that a Material Transaction is a transaction where an Issuer enters into a guarantee, or gives security, which could expose the Issuer to liability in excess of 10% of the Issuer’s AMC. ALF’s Guarantee of the Bonds, provision of the Charge, and provision of the General Security each have a potential value of \$1 million, and will therefore exceed 10% of ALF’s AMC (being approximately \$179,000). Therefore, the Guarantee of the Bonds, provision of the Charge, and provision of the General Security each constitute a Material Transaction with a Related Party for the purpose of Rule 9.2.2(d).
13. As outlined above, the issuing of the Bonds, the provision of the Guarantee, Charge, and the General Security are each considered a Material Transaction. Those transactions are part of a related series of transactions with the issue of the Options (with those transactions and the issue of the Options together referred to in this decision as the “**Funding Arrangements**”). The Funding Arrangements are also part of a related series of transactions with the CAML Funding and the NZFL Transaction. Rule 9.2.1 therefore requires that ALF may not enter into the Funding Arrangements, the CAML Funding or the NZFL Transaction without approval by an ordinary resolution of the shareholders of ALF.
14. NZX Regulation (“**NZXR**”) granted ALF a waiver from the requirement for shareholder approval for the CAML Funding and the NZFL Transaction (to the extent necessary) in the waiver decision dated 6 September 2013.

Application

15. ALF has applied to NZXR for a waiver from Rule 9.2.1 to enable AFRL to enter into the Funding Arrangements, without the prior approval of ALF's shareholders.
16. In support of its application ALF makes the following submissions:
- (a) The funding which would be made available by the issue of the Bonds and from CAML is urgently required for AFRL to settle an obligation that, if not urgently settled or agreed to be settled, will result in the appointment of a liquidator to AFRL and consequentially the immediate insolvency of ALF;
 - (b) As stated above, any delay in receiving consideration for the Bonds would prejudice ALF's ability to negotiate with the IRD which would most likely result in the immediate insolvency of the ALF group, significantly destroying the value of the business. In particular, the insolvency of the ALF group would create uncertainty as to the future ownership of its livestock joint venture subsidiary business, New Zealand Farmers Livestock Limited ("**NZFL**"). The shares AFRL owns in NZFL are the largest asset left in the ALF group, with a value in excess of \$5 million. AFRL urgently needs to be assured that the funding from the Bonds will be available so the Board of ALF can reaffirm the assumptions underlying its solvency determination. If AFRL is not able to secure the issue of the Bonds, the consequence will be that the IRD will appoint a liquidator to AFRL which would likely lead ALF to ask CAML to appoint a receiver;
 - (c) ALF does not consider that it is practical to seek the approval of shareholders for the Bonds as:
 - (i) the date AFRL must confirm that funding from the Bonds would be available so the Board of ALF can reaffirm the assumptions underlying its solvency determination is earlier than the earliest date ALF could reasonably arrange for a meeting of shareholders in compliance with the Rules; and
 - (ii) the costs associated with seeking shareholder approval for the Bonds would outweigh the benefits in the context of ALF's AMC;
 - (d) The type of funding requested has elements of associated risk that means typical third party lenders would not provide it, and hence the funding is to be provided by parties generally with an interest in ensuring the future wellbeing of the ALF group. Regardless, it is highly unlikely that the required funding could be obtained from another source in the urgent timeframe. While CAML has agreed to provide some funding towards the settlement with the IRD, CAML has declined to provide the full amount required for the settlement;
 - (e) The terms of the Funding Arrangements and the decision to issue the Bonds have been commercially negotiated by ALF's and AFRL's Board (excluding Garry Bluett), on commercial and arms' length terms. Garry Bluett has not been involved in negotiating those terms on ALF or AFRL's behalf and has not been afforded any favourable treatment because of his Related Party status;
 - (f) The terms of the Funding Arrangements have been settled after discussions with a number of potential funders who are not Related Parties. In setting the terms of the Bonds the Board has taken into account the amount of funds required, the timeframe within which they are required and the risks associated with such an investment. Taking these factors into account together with the feedback from potential funders as to the level of return they would expect for the risk they are taking, the Board has determined that the terms of the Bonds are market. After those terms were established and indicative levels of commitment obtained, there was an indicative shortfall that

Garry Bluett and the Associated Person of Garry Bluett only at that point agreed to take up, without alteration to the terms. This process clearly evidences that a market of unrelated parties participated in the setting of the terms based on a commercial arms length negotiation led by Board members other than Garry Bluett, and that the terms, including the interest rate and issue of Options, are reflective of the market and not influenced by the participation of a Related Party.

Rules

17. Rule 9.2.1 provides that:

“An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; ...*

unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.”

18. Rule 9.2.2 provides that:

“For the purposes of Rule 9.2.1, “Material Transaction” means a transaction or a related series of transactions whereby an Issuer:

...

- (b) issues its own Securities or acquires its own Equity Securities having a market value in excess of 10% of the Average Market Capitalisation of that Issuer, save in the case of an issue pursuant to Rule 7.3.5 where only the market value of those Securities being issued to the Related Party or to any Employees (as defined in Rule 7.3.6) of the Issuer are to be taken into account; or*
- (c) borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 10% of the Average Market Capitalisation of the Issuer; or*
- (d) enters into any guarantee, indemnity, underwriting, or similar obligation, or gives any security, for or of obligations which could expose the Issuer to liability in excess of 10% of the Average Market Capitalisation of the Issuer;...”*

19. Rule 9.2.3 provides that:

For the purposes of Rule 9.2.1, “Related Party” means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

- (a) a Director or executive officer of the Issuer or any of its Subsidiaries; or...”*

Decision

20. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants ALF a waiver from Rule 9.2.1 so that ALF is not required to obtain shareholder approval for the Funding Arrangements to the extent that Garry Bluett and an Associated Person of Garry Bluett subscribe for Bonds.

21. The waiver in paragraph 20 is granted on the following conditions:

- (a) the Directors of ALF and AFRL (excluding Garry Bluett) certify, in a form acceptable to NZXR, that:
 - (i) Garry Bluett, and any Associated Persons of Garry Bluett, took no part in the negotiation of the Funding Arrangements on behalf of ALF or AFRL;
 - (ii) the terms and conditions of the Funding Arrangements were negotiated on a commercial and arms' length basis, and reflect appropriate terms for such agreements;
 - (iii) the issue of the Bonds will be at no more than market price, and the Funding Arrangements are in the best interests of ALF and the shareholders of ALF; and
 - (iv) in deciding to issue the Bonds, and determining the terms of the Funding Arrangements, neither ALF nor AFRL was influenced by Garry Bluett or any Associated Person of Garry Bluett; and
- (b) The waiver, its conditions and effect are disclosed in ALF's annual reports that relate to the periods during which ALF relies on this waiver.

Reasons

22. In coming to this decision, NZXR has considered the following matters:

- (a) The policy behind Rule 9.2.1 is to ensure that Related Parties do not exercise undue influence or use personal connections to reach a favourable outcome for, or a transfer of value to, the Related Party in respect of a transaction and that shareholders are given an opportunity to review transactions where the board may have been subject to actual or perceived influence from a Related Party;
- (b) NZXR expects Issuers to, where possible, seek approval from shareholders for transactions that require approval under Rule 9.2.1. Nevertheless, ALF and AFRL now urgently require the funding from the Funding Arrangements and the CAML Funding, and calling a shareholders meeting to consider the Funding Arrangements would delay the receipt of funding and would adversely affect the businesses;
- (c) ALF submits, and NZXR has no reason not to accept, that is unlikely that the funding could be obtained from another source in the urgent timeframe;
- (d) Garry Bluett and the Associated Person of Garry Bluett only agreed to participate as Funders after the terms of the Bonds were set and it became apparent there would be a shortfall in the amount AFRL could raise from the issue of the Bonds;
- (e) Garry Bluett and the Associated Person of Garry Bluett will purchase Bonds on the same terms as the other Funders; and
- (f) The certifications provided by ALF's Directors (excluding Garry Bluett) give NZXR comfort that the Bonds are being issued on commercial and arms' length terms, their issue is in the best interests of ALF and its shareholders, and were not influenced by Garry Bluett.

Confidentiality

23. ALF requests that this waiver application and any decision are kept confidential until the issuance of the Bonds has been announced to the market.

24. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants ALF's request.

ENDS.

